NO. 89-164

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1989

BO-MICK CONSTRUCTION CO., INC.

Petitioner

v.

MANSEL J. LAFLEUR

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF LOUISIANA

PETITION FOR A WRIT OF CERTIORARI

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ATTORNEYS FOR PETITIONER

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Questions Presented

(1). Did the Supreme Court of the State of Louisiana err in summarily vacating the summary judgment granted by the Twenty-Fifth Judicial District Court for the Parish of Plaquemines, State of Louisiana and affirmed by the Louisiana Fourth Circuit Court of Appeal without showing any genuine issue of material fact?

(2). Did the Supreme Court of the State of Louisiana err in failing to apply the United States Court of Appeals for the Fifth Circuit's line of jurisprudence which mandates the grant of summary judgment in this case?

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NO.

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OCTOBER TERM, 1989

BO-MICK CONSTRUCTION CO., INC.

Petitioner

v.

MANSEL J. LAFLEUR

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF LOUISIANA

PETITION FOR
A WRIT OF CERTIORARI

Bo-Mick Construction Co., Inc., as Cross-Petitioner, hereby petitions this Court to issue a writ of certiorari to review the Orders of the Supreme Court of the State of Louisiana entered on March 27, 1989 and April 21, 1989 in the proceeding entitled "Mansel

J. LaFleur v. P & S Well Service No. 5, Inc. et al", No. 89-C-0425 of the docket of the said Supreme Court of the State of Louisiana.

OPINIONS BELOW

The Orders of the Supreme Court of the State of Louisiana are reproduced in Appendices A and B, commencing at page A-1. No opinion was rendered by the Louisiana Supreme Court. The Findings of Fact and Conclusions of Law by the Court of Appeal, Fourth Circuit, State of Louisiana, are reproduced in Appendix C commencing at page A-5. The Judgment on Motion for Summary Judgment of the Twenty-Fifth Judicial District Court for the Parish of Plaquemines, State of Louisiana is reproduced in Appendix D commencing at Page A-15.

JURISDICTIONAL GROUNDS

The orders of the Louisiana Supreme Court, the first granting Mansel J. LaFleur's writ of certiorari and/or review and vacating summary judgment was entered March 27, 1989. Your Petitioner's timely application for rehearing was denied by that same Court on April 21, 1989. This Honorable Court has jurisdiction to review the Order of the Louisiana Supreme Court pursuant to 28 U.S.C.§1257.

STATUTORY PROVISIONS INVOLVED

46 U.S.C. §688, in the portion which is pertinent to the issues presented herein, provides as follows:

> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury...

33 U.S.C. §§903(a) and 902(3)(g) provide in pertinent part:

> Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States...
>
> ...the term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker, but such term does not include...
>
> a master or member of a crew of any vessel...

STATEMENT OF THE CASE

The facts giving rise to the litigation can be summarized briefly. On or about October 7, 1985, plaintiff, Mansel J. LaFleur (hereinafter referred to as

"LaFleur") filed a Petition for Damages against his former employer, Bo-Mick Construction Company, Inc. (hereinafter referred to as "Bo-Mick") and others[1] alleging that he sustained injuries on or about October 10, 1984, while walking from the L/B GEAR ELEVATOR to a fixed platform owned by Gulf Oil Corporation (hereinafter referred to as "Gulf"). LaFleur brought suit pursuant to the Jones Act and the General Maritime Law, alleging he was a seaman and a member of the crew of the L/B GEAR ELEVATOR, a vessel neither owned nor operated by his employer.

At the time of the incident in suit, Bo-Mick was performing fixed platform painting and sandblasting services for Gulf pursuant to an agreement between Bo-Mick and Gulf which required Bo-Mick to perform

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1 Supra note at p.1.

various general oilfield construction and maintenance services on Gulf's fixed platforms.

Additionally, at that time, Bo-Mick had procured certain excess maritime employer liability insurance policies. Said policies, which were effective from April 1984 through April 1985, were subscribed to by Certain Underwriters at Lloyd's, London, represented herein by Robert Murray Collins and John Richard Ludbrooke Youell, and are evidenced by Certificates of Insurance Nos. CSBM 0284 and CSBM 0384. Both excess insurance policies provide coverage only for certain claims by Bo-Mick's own employees under the Jones Act and the General Maritime Law. It is disputed, but not material hereto, whether those certificates provided coverage in respect of the claims of Bo-Mick's employees who were <u>not</u> seamen.

On or about July 30, 1987, Bo-Mick filed a contingent third-party petition against Certain Underwriters at Lloyd's, London alleging these excess maritime employer liability policies provided coverage for its Jones Act and General Maritime Law exposure to LaFleur, for this litigation in the event he was to be found to be a seaman, a fact vigorously denied by Bo-Mick. On or about August 5, 1987, plaintiff filed a First Supplemental and Amended Petition, alleging coverage under these excess maritime employer liability policies for his damage claims and rights of recovery against Petitioners under the Louisiana Direct Action Statute (La.R.S. 22:655).

Shortly after answering said petitions, Petitioner filed a Motion for Summary Judgment on the issue of seaman status. The basis for this Motion was firmly supported by unequivocal testimony by LaFleur that he did not perform any work on the two support vessels which tended the particular Gulf fixed platforms upon which he performed painting and sandblasting. (Depo. of LaFleur, pp. 37, 43, attached hereto as Appendix E at pp. A-18-20). LaFleur was never assigned to either barge nor did he contribute to their functions. Further, Captain Hillery Creel had testified to the fact that LaFleur "never did assist me in nothing". (Depo. of Creel, pp. 53, 57, attached hereto as Appendix F at pp. A-29-31).

Accordingly, on January 15, 1988, the Twenty-Fifth Judicial District Court for

the Parish of Plaquemines, State of Louisiana granted said Motion, finding that LaFleur was not a seaman, and consequently dismissed LaFleur's Jones Act and General Maritime Law claims. However, the lower court specifically reserved unto LaFleur all rights under the Longshoremen's and Harbor Workers' Compensation Act and/or the Louisiana Workers' Compensation Act. This judgment was affirmed on December 13, 1988 by the Louisiana Fourth Circuit Court of Appeal.

On March 27, 1989, the Louisiana Supreme Court summarily vacated the Summary Judgment and on April 21, 1989 summarily denied Petitioner's Application for Rehearing. Petitioner's Motion for Summary Judgment was firmly supported by the uncontroverted record in the trial court and presented no genuine issues of

material fact. Furthermore, the Louisiana Supreme Court's action in vacating Summary Judgment on seaman's status in this case results in a direct conflict with the current position of the United States Court of Appeals for The Fifth Circuit on an important admiralty issue. Accordingly, Petitioner seeks a Writ of Certiorari to review this improper result.

REASONS FOR GRANTING THE WRIT

I. A WRIT SHOULD BE ISSUED TO DETERMINE WHETHER THE SUPREME COURT OF LOUISIANA ERRED IN SUMMARILY VACATING SUMMARY JUDGMENT ON THE ISSUE OF SEAMAN'S STATUS IN A CASE WHICH PRESENTED NO GENUINE ISSUES OF MATERIAL FACT.

A court may decide that seaman's status is lacking as a matter of law. Barrett v. Chevron U.S.A., Inc., 781 F.2d 1067, 1074 (5th Cir. 1986); White v. Valley Line Co., 736 F.2d 304, 305 (5th Cir. 1984); Wallace v. Oceaneering Intl., 727

F.2d 427, 432 (5th Cir. 1984); Dove v. Belcher Oil Company, 686 F.2d 329, 334 (5th Cir. 1982). As the U.S. Fifth Circuit noted in Barrett, seaman's status may be determined by summary judgment in the appropriate situation:

> Thus, we have held that where the facts establish beyond question as a matter of law the lack of seaman status . . . a court . . . may, in the proper case, hold that there is no reasonable evidentiary basis to support a jury finding that the injured person is a seaman . . . under the Jones Act.

Barrett, 781 F.2d at 1074 (citing Guidry v. Continental Oil Co., 640 F.2d 523 (5th Cir. 1981), cert. denied 454 U.S. 818 (1981)).

In Fayard v. Contifleeting Inc., 511 So.2d 3,4 (La. App. 4th Cir.), writ denied, 514 So.2d 461 (La. 1987), the Louisiana Fourth Circuit Court of Appeal noted:

> While summary judgment on seaman status in Jones Act cases is rarely

> proper, and even in marginal cases should go to the jury, it is in some circumstances possible to rule as a matter of law that a worker is not a seaman, Bouvier v. Krenz, 702 F.2d 89, at 90 (5th Cir. 1983), and the cases cited therein; cf. Pizzitolo v. Electro-Coal Transfer Corp., 812 F.2d 977 (5th Cir. 1987), where the appeals court affirmed the district court's decision on the issue as a matter of law in rendering a judgment notwithstanding the verdict.

The classic test to determine whether a worker has offered evidence sufficient to warrant a jury verdict that he is a seaman was set forth in Offshore Company v. Robison, 266 F.2d 769, 779 (5th Cir. 1959). Judge Wisdom articulated the now traditional test for seaman status as follows:

1. The injured worker must have been "assigned permanently to a vessel . . . or performed a substantial part of his work on the vessel," and

2. The work he performed must have "contributed to the function of the vessel or to the accomplishment of its mission,

> or to the operation or welfare of the vessel in terms of its maintenance." (emphasis added)

This test has been qualified by the U.S. Fifth Circuit time and time again. The term "vessels" has been expanded to include an identifiable fleet of vessels in additional to a single vessel, but the relationship between the injured worker and an identifiable vessel or group of vessels must be "substantial in point and time and not merely spasmodic." Ward v. Reeled Tubing, Inc., 637 F. Supp. 33, 35 (E.D. La. 1986), aff'd, 811 F.2d 600 (5th Cir. 1987); Bertrand v. Intl. Mooring & Marine, Inc., 700 F.2d 240 (5th Cir. 1983). The permanency requirement mandates that "a claimant must have more than a transitory connection with the vessel or a specific group of vessels." Barrett, supra (citing Ardoin v. J. Ray McDermott Co., 641 F.2d

277, 288 (5th Cir. 1981)). Additionally, it must be proven that the injured worker performed a significant part of his work aboard the vessel, with "at least some degree of regularity and continuity." Keener v. Transworld Drilling, Co, 468 F.2d 729, 732 (5th Cir. 1972). See, e.g. Barrios v. Engine & Gas Compressor Services, Inc., 669 F.2d 350, 353 (5th Cir. 1982); Holland v. Allied Structural Steel Co., 539 F.2d 476, 484 (5th Cir. 1976). The U.S. Fifth Circuit, sitting en banc, has also held that unless a worker's "permanent job assignment" changed before the injury, the relevant time period for assessing his status as a seaman is the entire course of his employment with his current employer. Barrett, 781 F.2d at 1076-77.

Application of this test to the uncontroverted facts of this case illustrates there are no genuine issues as to any material facts and that Petitioner was entitled to Judgment as a matter of law, as was initially decided by the lower court and affirmed by the appellate court. First, LaFleur was never assigned permanently to an identifiable vessel or group of vessels. LaFleur admits that the two vessels with which he had any connection only transported him to his jobsite (on fixed platforms) and carried his equipment. (Depo. of LaFleur, pp. 43, 45, 47, attached hereto as Appendix E at pp. A-19-23). Secondly, LaFleur did not perform any of his work on the vessel, much less a substantial part of his work. In fact, LaFleur has admitted that the actual sandblasting and painting took place on the

fixed platforms. (Depo. of LaFleur, p. 43, attached hereto as Appendix E at pp. A-19-21). Lastly, the record is abundant with evidence that LaFleur never contributed to the function of the vessel in terms of its maintenance, operation and welfare. (Depo. of LaFleur, p. 43, attached hereto as Appendix E at pp. A-19-21; Depo. of Creel, attached hereto as Appendix F at p. A-26). Accordingly, Petitioner asserts the question of seaman's status in this case should have been resolved by summary judgment, and the Louisiana Supreme Court erred in summarily vacating the summary judgment since there are no genuine issues of material fact.

II. A WRIT SHOULD BE ISSUED TO DETERMINE WHETHER THE SUPREME COURT OF LOUISIANA ERRED IN SUMMARILY VACATING SUMMARY JUDGMENT ON THE ISSUE OF JONES ACT SEAMAN'S STATUS WHERE SUCH A RULING IS IN DIRECT CONFLICT WITH THE CURRENT POSITION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

It is incumbent upon the Louisiana Supreme Court to follow substantive law as developed in federal cases with respect to cases filed pursuant to 46 U.S.C. §688. Macomber v. De Bardeleben Coal Co., Inc., 8 So.2d 624 (La. 1942), cert. denied 317 U.S. 661 (1942).[2]

Three recent decisions by the United States Court of Appeals for the Fifth

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2 See also Wright v. Ocean Drilling & Exploration Company, 444 So.2d 129, 134-35 (La. App. 4th Cir. 1983); Barboza v. Texaco, Inc., 434 F.2d 121 (1st Cir. 1970); Dixon v. Serodino, Inc., 331 F.2d 668 (6th Cir. 1964); cf. Urie v. Thompson, 337 U.S. 163, 174 (1949).

Circuit[3] conclusively support the proposition that persons whose work activities are in large part performed on fixed platforms do not enjoy seaman's status just because they may have been incidentally involved with a tender vessel which provided support services to the platform. In other words, offshore workers in these settings are deemed to be "permanently assigned" to the fixed platform on which they are working, rather than to the tender vessel with which the prospective claimant may have had incidental contact.

Further, a very recent decision of the United States Court of Appeals for the

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3 See, Longmire v. Sea Drilling Corp., 610 F.2d 1342 (5th Cir. 1980); Golden v. Rowan Companies, Inc., 778 F.2d 1022 (5th Cir. 1985); and Miller v. Rowan Companies, Inc., 815 F.2d 1021 (5th Cir. 1987).

Fifth Circuit mandates the grant of summary judgment in this case.

In Chauvin v. Sanford Offshore Salvage, Inc., 868 F.2d 735 (5th Cir. 1989), Sanford employed the plaintiff as a member of its regular work crew. The plaintiff was generally assigned to Sanford's barge, the SEA SALVOR, and when the SEA SALVOR performed offshore salvage work, he was assigned to that vessel. These assignments were sporadic and unpredictable in both frequency and length. During the gaps between assignments, the plaintiff worked in Sanford's salvage yard and assisted in the repair of the SEA SALVOR. At the time of his accident, the plaintiff was working on the SOUTHERN NO. 6., a barge chartered by Sanford from Southern Shipbuilding Corporation for the purpose of lifting equipment which exceeded

the SEA SALVOR's capacity. On the morning of the accident, the plaintiff had been ordered to assist in transporting equipment from Sanford's yard to the dock and to assist the crew of the SOUTHERN NUMBER 6. While assisting in the rigging of a spreader bar to the crane of the barge, the plaintiff was injured when a pin from a loading sling, weighing approximately 120 lbs., fell onto his foot.

The plaintiff sued his employer, Sanford Offshore, for its negligence, alleging he was a seaman under the Jones Act, and Southern Shipbuilding, the owner of the barge chartered by Sanford, alleging unseaworthiness under the General Maritime Law or negligence under §905(b) of the LHWCA. The district court found that the plaintiff was not a seaman and dismissed the case as against Sanford and its Excess

MEL underwriters, because under the LHWCA, the employer could not have liability to its employee except for compensation and medical. The Fifth Circuit affirmed, relying on its prior decision in Pizzitolo v. Electro-Coal Transfer Corp., 812 F.2d 977, 983 (5th Cir. 1987), cert. denied, ____U.S. _____, 108 S.Ct. 1013, 98 L.Ed. 2d 978 (1988), which clarified the standard for determining whether a plaintiff should be characterized as a Jones Act seaman or a LHWCA longshoreman. The court concluded:

> Although we have on occasion analyzed the question of whether an employee engaged in longshoring or ship repairing was a member of the crew of a vessel under the Robison test, we are persuaded that such an analysis is unnecessary if the employee is engaged in an occupation expressly enumerated in the (LHWCA). Because workmen engaged in certain enumerated occupations are explicitly covered by the LHWCA if they meet the Act s situs requirement, ...these workers were ineligible for consideration as seaman or members of the crew of a vessel entitled to

> Jones Act benefits. Chauvin, supra, at 739, (Emphasis added).

Based on the LHWCA and Pizzitolo, the District Court found, and the Fifth Circuit affirmed, that the plaintiff's activities at the time of his injury as well as his general employment background (loading and unloading cargo and onshore vessel repair) fell within the ambit of the LHWCA, inasmuch as he was engaged in occupations enumerated in the LHWCA. Accordingly, the Fifth Circuit affirmed that Chauvin was not a seaman under the Jones Act.

In Howard v. Rebel Well Service, 632 F.2d 1348 (5th Cir. 1980), the United States Fifth Circuit held that a plaintiff who was employed as a painter and sandblaster at a yard where his employer performed minor repairs on navigable floating barges and who spent approximately ten percent of his time

painting/sandblasting equipment from barge rigs was engaged in maritime employment and met the status requirement of the LHWCA.

The record of the trial court clearly shows that LaFleur was not assigned to any vessels; rather, he was assigned to the fixed platforms upon which he performed his painting and sandblasting work. In his deposition, LaFleur testified that he does not remember ever working off of the barges. (Depo. of LaFleur, p. 43, attached hereto as Appendix E at pp. A-54-55). Additionally, Captain Hillery Creel testified that it was his exclusive duty to navigate and maintain the L/B GEAR ELEVATOR and that LaFleur never assisted him in any of his work. (Depo. of Creel, p. 53, attached hereto as Appendix F, pp. A-64-65). The totality of the record in conjunction with the jurisprudence

indicates that LaFleur was not permanently assigned to any vessel or fleet of vessels nor was he a member of the crew. Rather, he was assigned to the fixed platforms upon which he performed his painting and sandblasting duties. Fixed platforms are treated as artificial islands and, as such, are not vessels. Workers assigned to such platforms therefore do not qualify for seaman status. Bertrand v. Shell Oil Co., 489 F.2d 293, 295 (5th Cir. 1974), Bertrand v. Forest Oil Co., 441 F.2d 809, 811 (5th Cir.), cert. denied, 404 U.S. 863 (1971).

Thus, pursuant to the aforementioned controlling jurisprudence, it is clear that LaFleur is not a Jones Act seaman, but rather a longshoreman or a state worker.

The undisputed central facts are supported by the deposition testimony of LaFleur's co-worker, Donald Michael Dean. See Appendix-G.

CONCLUSION

Petitioner respectfully requests this Honorable Court to grant its Petition for Writ of Certiorari and to order the Louisiana Supreme Court to reverse its prior ruling based on the fact that there is no genuine issue of material fact as to LaFleur's seaman status and the ruling of the Louisiana Supreme Court directly conflicts with the United States Court of Appeals for the Fifth Circuit's current line of jurisprudence on this important Jones Act issue, or alternatively grant a full hearing on the issues presented to it.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of July, 1989, three copies of the Petition for Writ of Certiorari were mailed, postage prepaid, to each of the following:

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I further certify that all parties required to be served have been served.

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APPENDIX A

THE SUPREME COURT OF THE STATE OF LOUISIANA

MANSEL J. LAFLEUR

VS. NO. 89-C-0425

P & S WELL SERVICE NO. 5, INC. ET AL (BO-MICK CONSTRUCTION COMPANY, INC., ET ALS)

IN RE: BO-MICK CONSTRUCTION CO., INC., applying for Rehearing of this Court's Order of March 27, 1989; 4th Circuit Court of Appeal, No. 88CA-0686; 25th Judicial District Court, Div. A, Parish of Plaquemines, No. 28-208

April 21, 1989

Rehearing denied.

LFC

JAD

WFM

JLD

JCW

CALOGERO, J., would grant the rehearing.

Supreme Court of Louisiana
April 21, 1989

Frans J. LaBranche, Jr.
Clerk of Court
For the Court

APPENDIX B

THE SUPREME COURT OF THE STATE OF LOUISIANA

MANSEL J. LAFLEUR

VS. NO. 89-C - 0425

P & S WELL SERVICE NO. 5 INC. et al

- - - - - -

IN RE: LaFleur, Mansel J.; - Plaintiff(s); Applying for Writ of Certiorari and/or Review; to the Court of Appeal, Fourth Circuit, Number 88CA-0686; Parish of Plaquemines 25th Judicial District Court Div."A" Number 28-208

- - - - - -

March 27, 1989

Granted. Summary judgment vacated. Case remanded to trial court for further proceedings.

JCW

JAD

WFM

LFC

CALOGERO, J., would grant and docket for argument.

Supreme Court of Louisiana
March 27, 1989

Frans J. LaBranche, Jr.
Clerk of Court
For the Court

APPENDIX C

MANSEL J. LAFLEUR

VERSUS

P & S WELL SERVICE
NO. 5, INC., ET AL

NO. 89-CA-0686

COURT OF APPEAL

FOURTH CIRCUIT

STATE OF LOUISIANA

APPEAL FROM
TWENTY-FIFTH JUDICIAL DISTRICT
PARISH OF PLAQUEMINES
DIVISION A, NO. 28-208
HONORABLE MICHAEL E. KIRBY, JUDGE

STEVEN R. PLOTKIN
JUDGE

(Court composed of Chief Judge Patrick M. Schott and Judges Robert J. Klees, and Steven R. Plotkin

Plaintiff has appealed from a summary judgment denying his Jones Act claim. We affirm.

Plaintiff Mansel J. LaFleur was injured October 10, 1984, while working as a painter/sandblaster for defendant Bo-Mick Construction Company, Inc. (hereinafter Bo-Mick). He alleges his injuries occurred while he was stepping from a vessel, the L/B Gear Elevator, to the fixed platform on which his duties were performed. He brought suit based upon 46 U.S.C. 688 (the Jones Act) and General Maritime Laws of the United States, or, in the alternative, 33 U.S.C. 901 (the Longshoremen's and Harborworkers' Compensation Act), against Bo-Mick, his employer, P & S Well Service NO. 5, Inc., owner of the vessel; and Gulf Oil Company, Inc., platform owner. He later amended his petition to include

Liberty Mutual Insurance Co., Bo-Mick's insurer, and certain underwriters of Lloyds of London, Bo-Mick's excess coverage insurer. Bo-Mick and Lloyds of London filed motions for summary judgment.

On November 25, 1987, the parties agreed to submit the matter to the trial court on written briefs. On January 15, 1988, judgment was rendered dismissing plaintiff's Jones Act and General Maritime Law claims and reserving to plaintiff his claims under the Longshoremen's and Harborworkers' Compensation Act or Louisiana Worker's Compensation Act.

I.

Mansel J. LaFleur, who worked for Bo-Mick approximately six months prior to the accident, sandblasted and painted fixed platforms owned by Gulf Oil Company in Black Bay, in Plaquemines Parish,

Louisiana. The work did not require that LaFleur stay overnight on a vessel; each morning he met a crewboat which took him to the jack-up barge containing his sandblasting and painting equipment. The barge could move under its own power but it was slow and cumbersome; its primary function was to hold the compressor and sandblasting pots used in maintaining the platforms. When plaintiff left the crew boat and boarded the barge each morning, the barge traveled a short distance and positioned itself adjacent to the platform. The plaintiff's job required that he use an air hose from the barge on the platform and that he go back and forth between the barge and the platform many times a day.

On the day of the accident, the jack-up barge was positioned about four feet above the platform. In going from the

barge to the platform, plaintiff attempted to step onto a piling but slipped and fell to the platform and then into the water. Plaintiff alleges he suffered injuries that have prevented him from working since that time.

Plaintiff argues that summary judgment is rarely proper in Jones Act cases and that it is improper in this case because there is a reasonable evidentiary basis to support a finding that the plaintiff is a seaman.

II.

Under the Jones Act, "any seaman who shall suffer a personal injury in the course of his employment" has a right to claim damages in an action alleging that his employer was negligent. 46 U.S.C.A. section 688. This court recently reviewed the question of when a question of seaman

status could be resolved by summary judgment. In Fayard v. Contifleeting Inc., 511 So.2d 3, 4 (La. App. 4th Cir.), writ denied, 514 So.2d 461 (La. 1987), we noted:

> (w)hile summary judgment on seaman status in Jones Act is rarely proper, and even in marginal cases should go to the jury, it is in some circumstances possible to rule as a matter of law that a worker is not a seaman. Bouvier v. Krenz, 702 F.2d 89, at 90 (5th Cir. 1983), and cases cited therein; cf. Pizzitolo v. Electro-Cool Transfer Corp., 812 F.2d 977 (5th Cir.1987), where the appeals court affirmed the district court's decision on the issue as a matter of law in rendering a judgment notwithstanding the verdict.

As in Fayard, here the facts of the plaintiff's duties are not in dispute and the only issue is whether the facts meet the requirements for seaman status.

The test for seaman status was established in Offshore Company v.

Robison, 266 F.2d 769, 779 (5th Cir., 1959). The Robison court stated:

> there is an evidentiary basis for a Jones Act case to go to the jury: (1) if there is evidence that the injured workman was assigned permanently to a vessel ... or performed a substantial part of his work on the vessel; and (2) if the capacity in which he was employed or the duties which he performed contributed to the function of the vessel or to the accomplishment of its mission, or to the operation or welfare of the vessel in terms of its maintenance during its movement or during anchorage for its future trips.

Recently the Robison test was reaffirmed in Barrett v. Chevron, U.S.A., Inc., 781 F.2d 1067 (5th Cir. 1986).

Applying the Robison test to the case at hand, we find that LaFleur did not satisfy the first element of the standard. LaFleur admitted in his deposition that all his work was done on fixed platforms and he had no duties on the barge. The fifth Circuit in Kirk v. Land & Marine

Applicators, Inc., 555 F.2d 481 (5th Cir. 1977), addressed the question of whether a sandblaster/painter working on a fixed platform was a seaman for Jones Act purposes. The court found that although the plaintiff had incidental ties to a support vessel (he lived aboard one), his principal duties as a sandblaster and painter were performed on the fixed platform and therefore he did not satisfy the first element of the Robison test. The plaintiff in Kirk had a stronger tie to a vessel than LaFleur because he ate, slept and did minor chores aboard it; LaFleur's only relationship with the vessel was that it provided him with transportation to the platform and storage space for his gear.

Moreover, recent cases have held that workers whose duties occur primarily on fixed platforms are not to be considered

seaman on the basis of their connection with vessels offering mainly support services for the platform. Longmire v. Sea Drilling Corp., 610 F.2d 1342 (5th Cir. 1980) (a roughneck assigned to a drilling platform who occasionally performed tasks on the support vessel was not a seaman even though he was injured while stowing the anchor chain); Billings v. Chevron, U.S.A., INC., 618 F.2d 1108 (5th Cir. 1980) (a roustabout on a fixed platform rig whose duties included loading and unloading tenders onto the platform was not a seaman); Golden v. Rowan Companies, Inc., 778 F.2d 1022 (5th Cir. 1985) (worker who maintained motors on a rig and performed various jobs of short duration on a vessel was denied seaman status); Miller v. Rowan Companies, Inc., 815 F.2d 1021 (5th Cir. 1987) (worker whose job entailed retrieving

drilling tools from a well and who lived aboard an adjacent vessel which served as bunkhouse for the crew was not a seaman).

Because plaintiff fails to meet the first element of the Robison test--that he was assigned permanently to a vessel or performed a substantial part of his work on a vessel--and therefore cannot be considered a seaman for purposes of the Jones Act, it is not necessary for us to examine the second element of Robison.

Accordingly, the judgment of the district court is affirmed.

AFFIRMED

APPENDIX D

TWENTY-FIFTH JUDICIAL DISTRICT COURT

PARISH OF PLAQUEMINES

STATE OF LOUISIANA

NO. 28-208 DIVISION "A"

MANSEL J. LAFLEUR

VS.

P & S WELL SERVICE #5, INC., ET AL

FILED: JAN 15, 1988 Candace Dufrene
DEPUTY CLERK

JUDGMENT ON MOTION FOR SUMMARY JUDGMENT

This matter was set for hearing on November 25, 1987. All parties agreed to submit the matter.

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of Robert Murray Collins and John Richard Ludbrooke Youell, as representative of

Certain Underwriters at Lloyd's London severally subscribing each for himself and not one for the other, to certain maritime employer's liability coverage, and against plaintiff Mansel J. LaFleur finding that said plaintiff is not a seaman within the meaning of the Jones Act or the General Maritime Law of the United States and dismissing those claims of plaintiff as to all defendants.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of defendant Bo-Mick Construction Company, Inc. and against plaintiff, Mansel J. LaFleur, dismissing the plaintiff's Jones Act and General Maritime Law claims as to Bo-Mick Construction Company, Inc., specifically reserving to plaintiff any claim he may have under the Longshoreman's

and Harbor Worker's Act, or the Louisiana Worker's Compensation Act, or both, if any.

JUDGMENT READ, RENDERED AND SIGNED at Pointe-ala-Hache, Louisiana this 15th day of January, 1988.

M. Kirby
J U D G E

APPENDIX E

Excerpts from Deposition of MANSEL J. LAFLEUR

Deposition of LaFleur - page 37

captain in jacking the barge up?

A. No.

Q. Did you ever assist in tying the barge up or untying the barge?

A. Huh-uh (negative response).

Q. You have to say yes or no.

A. No.

Q. Did you ever work on the engines on the barge?

A. No.

Q. Did you ever clean or paint the barge?

A. No.

Q. Did you ever do any work on the barge, other than work on Bo-Mick's equipment that would be on the barge? In

other words, did you ever do any mechanic's work on the barge or help the captain with anything?

A. No.

Q. Did you every drive the barge, steer the barge anywhere?

A. No.

Q. I suppose you would take your lunch on the barge during the day?

Deposition of LaFleur - page 43

Q. Are the structures pretty close together out there?

A. Yeah, they're not far apart.

Q. And the work on all of these was sandblasting and then painting; is that correct?

A. Yes.

Q. Now, as far as the crewboat ride, you didn't have to drive the crewboat at all, did you.

A. No, sir.

Q. Now, the sandblasting and painting work that you did on the structures during the time you worked for Bo-Mick in the Black Bay field, did you ever have to work on the barge itself, stand on the barge itself to do the work on the platform, or did you get off of the barge to do your work?

A. Most of the time you just -- you don't work on the barge. You have to paint on the platform. I don't remember ever working off of the barge to get to nothing.

Q. Now, when you got to a

small two-gallon paint pot. We had to take them on the platform with us.

Q. As far as the sandblasting is concerned, the sandblast pots and the compressor would remain on the barge?

A. Yes, sir.

Q. And I suppose there would be rubber hoses that went across to the platform, to the guns themselves?

A. Right.

Q. Did the helper ever do any sandblasting or painting?

A. No.

Q. Was his job just to keep the pots filled and make sure the equipment was running?

A. Yes, sir. He shoveled sand, he tailed our paint lines, helped us tape gauges and stuff, and then when we sandblasted, he had to run the pot on the barge.

Q. So he would make sure the pot was full of sand?

A. Yeah, fill it up and turn it on and off.

Deposition of LaFleur - page 47

Q. When did you do that? That's something you had a regular time every day that you would do it?

A. When sandblasting, we usually stop a couple of hours before knock-off time to blow it down. We blow it down with the hose as much as we could.

Q. By blowing it down, you mean the structure you just got done sandblasting?

A. Yes, so we could paint it. And sometimes if it was too heavy, we had to shovel it off of there. We done that every day. But we both done it. I helped him do it.

Q. What about the sand that got on the barge during the operation? I'm sure some sand must have blown on the barge. Who cleaned that?

A. The skipper, as far as I know, he would wash it. I mean I don't know. I never did clean it.

Q. All right. Now, at the time of the accident or the day of the accident, do you know the name or the number of the

A. She's married to him, yes.

MR. WARD:

Thank you very much, Mr. LaFleur.

EXAMINATION BY MR SACKS:

Q. I have just a few questions for you, please. Did you state that you had been working for Bo-Mick approximately six months by the time you had this injury?

A. Yes.

Q. All right. And during that six months, can you give me a general

description of the kind of work you were doing there?

A. Sandblast and paint.

Q. Was all the sandblasting and painting you did in connection with oil field type projects?

A. Yes, sir.

Q. Was the work that you did only for Gulf or was there work for other oil companies, as well?

A. As far as I can remember, it was for Gulf, Gulf Oil.

Deposition of LaFleur - page 130

Q. And did it consist mostly of painting and sandblasting offshore production facilities?

A. Yes.

Q. How did you learn of where you had to go or what particular platforms had to be painted?

A. Them boat captains knows the name of them platforms and how to get to them, and that's how we -- I mean I'm not navigator.

Q. Where would you report in the mornings, generally speaking? Would you go to the Bo-Mick office every morning?

A. No, sir, we would go to the boat docks in Buras where they dock their crewboats and catch our boat there every morning, and it let us back down that night.

Q. I'm a little confused about the situation or the structure and the barge. Now, you suggested that the little porch was about five steps or so below the main deck of the platform; is that correct?

APPENDIX F

Excerpts from Deposition of CAPTAIN CREEL

Deposition of Creel - page 8

or could you describe that for me?

A. Sometimes we'd come in, and sometimes we'd stay out. It's just according to how the weather was.

Q. You had quarters, sleeping quarters, on the --

A. No. We come home every night with a crew boat.

Q. There are no facilities on that barge to sleep?

A. No, sir.

Q. What about a galley? Does it have that?

A. No. It don't have anything. Just a little house on it.

Q. You say at the present time this barge is being used for welding support?

A. Right now. We've got a welder on there working for Chevron out there right now.

Q. Does the barge have a name?

A. Yes. GEAR ELEVATOR.

Q. Is that like a gear on a car?

A. GEAR ELEVATOR.

Q. Is that on the bow of the barge or

particular platform was from the headquarters?

A. I guess a couple of thousand yards, I imagine.

Q. How did you get back and forth to work each day?

A. Well, sometimes on my barge and

sometimes a crew boat would pick us up if I had to leave my barge on location.

Q. Did you go back and forth on this jack-up barge to work?

A. Well, at times, yeah, if I didn't leave it on location.

Q. Was your normal routine to leave it on location until you completed a job?

A. No. It was left up to us, if we wanted to leave it there or take it in.

Q. Well, at the time Mr. LaFleur was working there, did ya'll normally leave it on the platform site at night?

A. No, not particularly.

Q. Could you give me an idea, say, in the previous -- the week prior to this accident how many times you may have

Q. Yes. That particular platform that you were working on.

A. About two or three minutes from the barge. Maybe four. Something like that.

Q. And would Mr. LaFleur ride on the GEAR ELEVATOR during that trip?

A. Right.

Q. Did he assist you in positioning the GEAR ELEVATOR next to the platform?

A. No, sir. He never did assist me in nothing.

Q. That would be your docking maneuvers yourself?

A. Right.

Q. And there is no need to tie off or anything, you just start spudding down?

A. That's right.

Q. What would he do during that period when you were traveling from the wirehouse to the platform?

A. Oh, he would set in the cabin with me then and maybe stand outside, you know.

Deposition of Creel - page 57

A. Right.

Q. And with Bo-Mick?

A. Right.

Q. Did Mr. LaFleur or his helper ever assist you in any of the operation of the barge?

A. No, sir. Never did.

Q. To your knowledge, is the only work that they were involved in was the painting and sandblasting of the platform?

A. Right.

MR. SACKS:

That's all I have.

Thank you.

BY MR. WRIGHT:

Q. What is your source of information about the GEAR ELEVATOR working for Gulf and then getting laid off? How do you know about that?

A. Well, they run out of work for us out there.

Q. But how do you know that; from Mr. Ritchie?

A. Right. Well, they tell me. They tell

APPENDIX G

Excerpts from Deposition of Donald Michael Dean

Deposition of Dean - page 17

A. No.

Q. Did you ever see him paint or chip on the crewboat?

A. No.

Q. Did you ever see him do anything else regarding the crewboat except ride on it?

A. On the crewboat?

Q. Yes.

A. No.

Q. When you got to the warehouse, I believe you said that was where the crewboat took you?

A. That's correct.

Q. Describe the warehouse, if you would.

A. It's just a big tin building on four legs out in the water.

Q. Were these legs apparently sticking down into the bed of the water?

A. It is a little piece of land there. And it's got a little like dock running around it where all the boats park around it and all the other barges and work barges and stuff.

Deposition of Dean - page 20

platform on that jack-up barge?

A. Right.

Q. And did either you or Mr. Lafleur operate the barge?

A. No.

Q. Did you untie the barge at the dock, at the warehouse?

A. No.

Q. Did either of you tie it on when you got to the platform where you were going to work?

A. No. We don't tie them on.

Q. Well, did either you or Mr. Lafleur have anything to do with either the movement of the barge or its positioning by the platform?

A. No.

Q. Did Mr. Lafleur have anything to do with any painting of any part of the lift barge?

A. No.

Q. Any chipping?

A. No.

Q. Did you ever see him do anything to any of the structural members

Deposition of Dean - page 21

of that barge while you worked with him?

A. No.

Q. Did you do any such thing?

A. No.

Q. Where did the jack-up barge position itself when it got to this platform you

previously described where you were working?

A. I'm not too sure because I don't know the directions. I believe it was on the south side of the platform.

Q. By what, if anything, did it position itself?

A. The grating walkway there.

Q. About how high off the water level was the grating walkway?

A. About four foot.

Q. Now, other than the three days of work shown by the tickets Dean 1, 2 and 3, do you recall ever working with Mr. Lafleur on any other occasion?

A. No, not besides one time he was running a cherry picker down when we was putting the tanks in, but I didn't work around him. I didn't have nothing to